

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

NATNAEL L. TESFA, FREHIWOT T.
SEID, and MAHELAT T. BERHANU,

Plaintiffs.

v.

UR MENDOZA JADDOU, *in her
official capacity as* Director of U.S.
Citizenship and Immigration Services,

Defendant.

Civil No:

COMPLAINT TO COMPEL
AGENCY ACTION UNDER
28 U.S.C. § 1361 AND 5 U.S.C.
§§ 555(b), 706(1), AND FOR A
WRIT OF MANDAMUS TO
COMPEL DEFENDANTS'
ADJUDICATION OF VISA
PETITIONS

Alien Nos. 209 114 342
 209 755 298

COMPLAINT FOR WRIT OF MANDAMUS

To the Honorable Judges of Said Court:

Plaintiffs, Natnael L. Tesfa, Frehiwot T. Seid and Mahela T. Berhanu,
through undersigned counsel, allege as follows:

I. INTRODUCTION

1. This is a civil action brought pursuant to 28 U.S.C. § 1361, 8 U.S.C. § 1329,
and 28 U.S.C. § 1331, to redress the deprivation of rights, privileges and
immunities secured to Plaintiffs by compelling Defendant to perform a duty
that Defendant owes to Plaintiffs.

2. This action is brought to compel Defendant and those acting under her supervision to take action on two Petitions for Alien Relative, Form I-130 (“the Petitions”) that Plaintiff Natnael L. Tesfa (hereinafter “Natnael”) filed on behalf of his wife, Plaintiff Frehiwot T. Seid (hereinafter “Frehiwot”), and his stepdaughter, Plaintiff Mahelat T. Berhanu (hereinafter “Mahela”). This action also seeks to compel Defendant to adjudicate the I-485 Applications for Adjustment of Status (“the Applications”) that Plaintiffs Frehiwot and Mahelat filed concurrently with the Petitions. The Petitions and Applications have been pending with Defendant since August 31, 2020.
3. Plaintiffs are eligible for all benefits sought in the Petitions and Applications, and have complied with all requirements to seek said benefits.
4. Plaintiffs request that this Court issue injunctive relief and a writ in the nature of mandamus compelling the Defendant to make a determination to grant or deny the Petitions under 8 U.S.C. § 1154, and the Applications under 8 U.S.C. § 1255.

II. JURISDICTION

5. This Court has general federal question jurisdiction over this action under 5 U.S.C. §§ 555(b) and 706(a), 28 U.S.C. § 1331(a) and 28 U.S.C. § 1346(a)(2). Jurisdiction is also conferred by 5 U.S.C. § 704.
6. This Court also has jurisdiction to grant declaratory relief pursuant to 28 U.S.C. §§ 2201 and 2202 and F.R.C.P. 57 and 65.

III. VENUE

7. Venue in the Northern District of Georgia is proper pursuant to 28 U.S.C. §1391(e). Defendant is an Officer of the United States acting in her official capacity, and the U.S. Attorney General's Office, the Department of Homeland Security ("DHS"), and the United States Citizenship and Immigration Services ("USCIS") are agencies of the United States. Further, Plaintiffs reside in this judicial district.

IV. EXHAUSTION

8. There are no administrative remedies available for Plaintiffs to exhaust.

V. PARTIES

9. Plaintiff NATNAEL L. TESFA is a U. S. citizen. Plaintiffs Natnael and Frehiwot were lawfully married on November 8, 2018 in Decatur, Georgia, and Plaintiff Mahela was under age 18 at the time of that marriage, thereby qualifying as a legal stepdaughter for purposes of immediate relative visa sponsorship. Accordingly, Plaintiff Natnael submitted the Petitions for his wife, Plaintiff FREHIWOT T. SEID (Alien Number 209 114 342) and for his stepdaughter, Plaintiff MAHELA T. BERHANU (Alien Number 209 755 298) to Defendant's National Benefit Center on August 31, 2020, concurrently with Plaintiff Frehiwot and Plaintiff Mahela's Applications. All three Plaintiffs reside together in Snellville, Georgia, in this judicial district.
10. Defendant UR MENDOZA JADDOU is the Director of USCIS, a fee-for-service agency which is responsible for the administration and enforcement of the immigration laws of the United States. This action is brought against her in her official capacity.

VI. FACTUAL ALLEGATIONS

11. Plaintiff Natnael is a U.S. citizen. (Exhibit A). His wife, Plaintiff Frehiwot, and his stepdaughter, Mahelat, are natives and citizens of Ethiopia. Plaintiff Frehiwot last entered the United States as an asylee on July 18, 2018.

(Exhibit B). Plaintiff Mahlat last entered the United States on a B-2 visitor visa on October 14, 2016. (Exhibit C). All Plaintiffs currently reside together in Snellville, Georgia.

12. Plaintiff Natnael and Plaintiff Frehiwot were married on November 8, 2018 in Decatur, Georgia. (Exhibit D). At the time of the marriage, Plaintiff Mahelat, was under the age of eighteen years, thus creating the requisite stepchild relationship under § 201(b) Immigration Nationality Act.
13. On or about August 31, 2020, Plaintiff Natnael filed the Petitions on behalf of Plaintiffs Frehiwot and Mahelat in the immediate relative category at the Defendant's National Benefit Center. (Exhibit E). Because Plaintiffs Frehiwot and Mahelat were present in the United States after lawful admission, they concurrently submitted the Applications at the National Benefit Center on August 31, 2020. (Exhibit F).
14. Plaintiff Mahelat attended a biometrics appointment at the Defendant's Atlanta Application Support Center on December 1, 2020. (Exhibit G).
15. Defendant notified Plaintiff Frehiwot on October 6, 2020, that she was not required to attend a biometrics appointment because Defendant was able to reuse previously captured biometrics. (Exhibit H).

16. Plaintiffs have had no further correspondence from Defendant on their pending Petitions and Applications.
17. Plaintiffs have at all times met and continue to meet the requirements necessary to be approved on the Petitions and Applications.
18. According to USCIS, Form I-130 and Form I-485 filed in similar cases should be processed in 27 months. (Exhibit I). In the last 5 years such petitions were adjudicated in as little as 6.4 months. (Exhibit J).
19. Plaintiffs' Petitions and Applications were filed on August 31, 2020 and have therefore been pending for over 36 months. That is nearly 9 months longer than the stated current processing time.
20. The USCIS has not issued an interview notice nor sent any request for additional information.
21. Despite the passage of a significant amount of time, it does not appear that Defendant is moving forward on adjudicating Plaintiffs' Petitions.

COUNT 1

22. Plaintiffs reallege and incorporate by reference paragraphs 1 through 21 above.
23. Plaintiffs are eligible for immediate adjudication of their Petitions and Applications.

24. Plaintiffs have suffered and will continue to suffer significant and irreparable harm because of Defendant's policies, procedures, acts and failures to act as described herein.
25. Defendant violated Plaintiffs' statutory right to apply for benefits which Congress has provided under the INA, depriving Plaintiffs of the opportunity to legally live as a family in the United States under the INA.

COUNT 2

26. Plaintiffs reallege and incorporate by reference paragraphs 1 through 21 above.
27. Plaintiffs have suffered a legal wrong or have been "adversely affected or aggrieved" by agency action. 5 U.S.C. § 702. Plaintiffs are aggrieved by agency action, for which there is no other adequate remedy in a court.
5 U.S.C. § 704.

COUNT 3

28. Plaintiffs reallege and incorporate by reference paragraphs 1 through 21 above.
29. Defendant owes Plaintiffs a clear and certain duty to adjudicate Plaintiffs' Petitions and Applications.
30. Plaintiffs have no other adequate remedy at law.

VI. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully requests the Court:

1. Assume Jurisdiction over this action;
2. Issue a Writ of Mandamus compelling Defendant to immediately adjudicate the pending Petitions and Applications, and if approved, to deliver Plaintiffs' I-551 permanent residence cards to them at their address of record;
3. Retain jurisdiction during the adjudication of the Petitions and Applications in order to ensure compliance with the Court's orders;
4. Award Plaintiffs reasonable costs and attorney's fees under the Equal Access to Justice Act; and
5. Award such further relief as the Court deems just or appropriate.

RESPECTFULLY SUBMITTED this 7th of September, 2023.

_____/s/_____
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CERTIFICATE OF SERVICE

This is to certify I electronically filed the foregoing **COMPLAINT FOR WRIT OF MANDAMUS** and its accompanying Exhibits with the Clerk of Court using the CM/ECF system. This system will automatically send email notification of such filing to all below Defendants who are registered with this system. In addition, in compliance with local rules, this initial Complaint and the accompanying Exhibits and summons have also been served by First Class Mail, postage pre-paid, on:

Ur Mendoza Jaddou,
Director
c/o Office of the Chief Counsel
5900 Capital Gateway Drive
Mail Stop 2120
Camp Springs, MD 20588-0009

Ryan K. Buchanan, U.S. Attorney,
Northern District of Georgia
75 Ted Turner Drive SW
Suite 600
Atlanta, Georgia 30303

Certified this 7th day of September, 2023.

_____/s/_____
Leslie Diaz, Esq.
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LIST OF EXHIBITS

- | | |
|-----------|--|
| Exhibit A | Plaintiff Natnael's Naturalization Certificate; |
| Exhibit B | Plaintiff Frehiwot's Passport, Visa and I-94; |
| Exhibit C | Plaintiff Mahelat's Passport, Visa and I-94; |
| Exhibit D | Plaintiffs Natnael and Frehiwot's marriage certificate; |
| Exhibit E | Plaintiffs' I-130 receipt notices; |
| Exhibit F | Plaintiffs' I-485 receipt notices; |
| Exhibit G | Plaintiff Mahelat's Biometrics appointment notice; |
| Exhibit H | Plaintiff Frehiwot's Notice that biometrics are current; |

Exhibit I USCIS.gov current processing times printout: and

Exhibit J USCIS.gov average historical processing times.

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